

By: Representative Banks

To: Banking and Financial  
Services

## HOUSE BILL NO. 1291

1 AN ACT TO AMEND SECTION 75-67-515, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT THE COMMISSIONER OF BANKING SHALL IMPOSE A CIVIL  
3 PENALTY AGAINST A CHECK CASHER LICENSEE FOR INITIATING CRIMINAL  
4 PROCEEDINGS FOR AN OVERDRAWN CHECK; TO REQUIRE LICENSEES TO ATTEND  
5 ANNUAL CONTINUING EDUCATION TRAINING; TO AMEND SECTION 75-67-519,  
6 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE COMMISSIONER SHALL  
7 IMPOSE A CIVIL PENALTY AGAINST A LICENSEE FOR RENEWING OR  
8 EXTENDING A DELAYED DEPOSIT CHECK OR ACCEPTING REPAYMENT OF A  
9 DELAYED DEPOSIT CHECK WITH THE PROCEEDS OF ANOTHER CHECK CASHED BY  
10 THE SAME LICENSEE; TO AMEND SECTION 75-67-527, MISSISSIPPI CODE OF  
11 1972, TO INCREASE THE AMOUNT OF A CIVIL PENALTY THAT THE  
12 COMMISSIONER MAY IMPOSE AGAINST A LICENSEE FOR VIOLATIONS OF THE  
13 CHECK CASHERS ACT; AND FOR RELATED PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 **SECTION 1.** Section 75-67-515, Mississippi Code of 1972, is  
16 amended as follows:

17 75-67-515. (1) The department may adopt reasonable  
18 administrative regulations, not inconsistent with law, for the  
19 enforcement of this article.

20 (2) To assure compliance with the provisions of this  
21 article, the department may examine the books and records of any  
22 licensee without notice during normal business hours. The  
23 commissioner may charge the licensee an examination fee in an  
24 amount not less than Three Hundred Dollars (\$300.00) nor more than  
25 Six Hundred Dollars (\$600.00) for each office or location within  
26 the State of Mississippi plus any actual expenses incurred while  
27 examining the licensee's records or books that are located outside  
28 the State of Mississippi. However, in no event shall a licensee  
29 be examined more than once in a two-year period unless for cause  
30 shown based upon consumer complaint and/or other exigent reasons  
31 as determined by the commissioner.



32           (3) Each licensee shall keep and use in its business any  
33 books, accounts and records the department may require to carry  
34 into effect the provisions of this article and the administrative  
35 regulations issued under this article. Every licensee shall  
36 preserve the books, accounts and records of its business for at  
37 least two (2) years.

38           (4) Any fee charged by a licensee for cashing a check shall  
39 be posted conspicuously to the bearer of the check before cashing  
40 the check, and the fee shall be a service fee and not interest.

41           (5) Before a licensee deposits with any bank or other  
42 depository institution a check cashed by the licensee, the check  
43 shall be endorsed with the actual name under which the licensee is  
44 doing business.

45           (6) All personal checks cashed for a customer by a licensee  
46 shall be dated on the actual date the cash is tendered to the  
47 customer.

48           (7) No licensee shall cash a check payable to a payee unless  
49 the licensee has previously obtained appropriate identification of  
50 the payee clearly indicating the authority of the person cashing  
51 the check, draft or money order on behalf of the payee.

52           (8) No licensee shall indicate through advertising, signs,  
53 billboards or otherwise that checks may be cashed without  
54 identification of the bearer of the check; and any person seeking  
55 to cash a check shall be required to submit reasonable  
56 identification as prescribed by the department. The provisions of  
57 this subsection shall not prohibit a licensee from cashing a check  
58 simultaneously with the verification and establishment of the  
59 identity of the presenter by means other than presentation of  
60 identification.

61           (9) Within five (5) business days after being advised by the  
62 payor financial institution that a check has been altered, forged,  
63 stolen, obtained through fraudulent or illegal means, negotiated  
64 without proper legal authority or represents the proceeds of



65 illegal activity, the licensee shall notify the department and the  
66 district attorney for the judicial district in which the check was  
67 received. If a check is returned to the licensee by the payor  
68 financial institution for any of these reasons, the licensee may  
69 not release the check without consent of the district attorney or  
70 other investigating law enforcement authority.

71 (10) If a check is returned to a licensee from a payor  
72 financial institution because there are insufficient funds in or  
73 on deposit with the financial institution to pay the check, the  
74 licensee or any other person on behalf of the licensee shall not  
75 institute or initiate any criminal prosecution against the maker  
76 or drawer of the personal check with the intent and purpose of  
77 aiding in the collection of or enforcing the payment of the amount  
78 owed to the check casher by the maker or drawer of the check. If  
79 the licensee initiates criminal prosecution against the maker or  
80 drawer of a personal check because there are insufficient funds in  
81 or on deposit with a payor financial institution to pay the check,  
82 the commissioner shall impose a civil penalty of not more than One  
83 Thousand Dollars (\$1,000.00) against the licensee.

84 (11) Nothing in this article shall prohibit a licensee from  
85 issuing coupons to customers or potential customers which are  
86 redeemable against a deferred deposit transaction provided the  
87 redemption results in a financial benefit to the customer on  
88 current or future transactions.

89 (12) Each licensee shall attend annual continuing education  
90 training. The commissioner shall establish and conduct that  
91 training and shall maintain records on all licensees regarding  
92 that training. The amount of annual continuing education training  
93 that will be satisfactory to fulfill the requirements of this  
94 section shall be determined by the commissioner. If a licensee  
95 misses two (2) consecutive training sessions sponsored or approved  
96 by the commissioner as required by this subsection or fails to  
97 attend one (1) such training session within six (6) months after



98 receiving his or her license, the license shall not be renewed  
99 until the training is successfully completed.

100         **SECTION 2.** Section 75-67-519, Mississippi Code of 1972, is  
101 amended as follows:

102         75-67-519. (1) A licensee may defer the deposit of a  
103 personal check cashed for a customer for up to thirty (30) days  
104 under the provisions of this section.

105         (2) The face amount of any delayed deposit check cashed  
106 under the provisions of this section shall not exceed Four Hundred  
107 Dollars (\$400.00). Each customer is limited to a maximum amount  
108 of Four Hundred Dollars (\$400.00) at any time.

109         (3) Each delayed deposit check cashed by a licensee shall be  
110 documented by a written agreement that has been signed by the  
111 customer and the licensee. The written agreement shall contain a  
112 statement of the total amount of any fees charged, expressed as a  
113 dollar amount and as an annual percentage rate. The written  
114 agreement shall authorize the licensee to defer deposit of the  
115 personal check until a specific date not later than thirty (30)  
116 days from the date the check is cashed.

117         (4) A licensee shall not directly or indirectly charge any  
118 fee or other consideration for cashing a delayed deposit check in  
119 excess of eighteen percent (18%) of the face amount of the check.

120         (5) No check cashed under the provisions of this section  
121 shall be repaid by the proceeds of another check cashed by the  
122 same licensee or any affiliate of the licensee. A licensee shall  
123 not renew or otherwise extend any delayed deposit check. The  
124 commissioner shall impose a civil penalty of not more than One  
125 Thousand Dollars (\$1,000.00) against any licensee that violates  
126 this subsection.

127         (6) A licensee shall not offer discount catalog sales or  
128 other similar inducements as part of a delayed deposit  
129 transaction.



130 (7) A licensee shall not charge a late fee or collection fee  
131 on any deferred deposit transaction as a result of a returned  
132 check or the default by the customer in timely payment to the  
133 licensee. Notwithstanding anything to the contrary contained in  
134 this section, a licensee may charge a processing fee, not to  
135 exceed an amount authorized by the commissioner, for a check  
136 returned for any reason, including, without limitation,  
137 insufficient funds, closed account or stop payment, if such  
138 processing fee is authorized in the written agreement signed by  
139 the customer and licensee. In addition, if a licensee takes legal  
140 action against a customer to collect the amount of a delayed  
141 deposit check for which the licensee has not obtained payment and  
142 obtains a judgment against the customer for the amount of that  
143 check, the licensee shall also be entitled to any court-awarded  
144 fees.

145 (8) When cashing a delayed deposit check, a licensee may pay  
146 the customer in the form of the licensee's business check or a  
147 money order; however, no additional fee may then be charged by the  
148 licensee for cashing the licensee's business check or money order  
149 issued to the customer.

150 **SECTION 3.** Section 75-67-527, Mississippi Code of 1972, is  
151 amended as follows:

152 75-67-527. (1) In addition to any other penalty which may  
153 be applicable, any licensee or employee who willfully violates any  
154 provision of this article, or who willfully makes a false entry in  
155 any record specifically required by this article, shall be guilty  
156 of a misdemeanor and upon conviction thereof, shall be punishable  
157 by a fine not in excess of One Thousand Dollars (\$1,000.00) per  
158 violation or false entry.

159 (2) Compliance with the criminal provisions of this article  
160 shall be enforced by the appropriate law enforcement agency, which  
161 may exercise for that purpose any authority conferred upon the  
162 agency by law.



163           (3) When the commissioner has reasonable cause to believe  
164 that a person is violating any provision of this article, the  
165 commissioner, in addition to and without prejudice to the  
166 authority provided elsewhere in this article, may enter an order  
167 requiring the person to stop or to refrain from the violation.  
168 The commissioner may sue in any circuit court of the state having  
169 jurisdiction and venue to enjoin the person from engaging in or  
170 continuing the violation or from doing any act in furtherance of  
171 the violation. In such an action, the court may enter an order or  
172 judgment awarding a preliminary or permanent injunction.

173           (4) The commissioner may impose a civil penalty against any  
174 licensee adjudged by the commissioner to be in violation of the  
175 provisions of this article. The civil penalty shall not exceed  
176 One Thousand Dollars (\$1,000.00) per violation and shall be  
177 deposited into the Department of Banking and Consumer Finance,  
178 "Consumer Finance Fund."

179           (5) Any licensee convicted in the manner provided in this  
180 article shall forfeit the surety bond or deposit required in  
181 Section 75-67-509(c) and the amount of the bond or deposit shall  
182 be credited to the budget of the state or local agency which  
183 directly participated in the prosecution of the licensee, for the  
184 specific purpose of increasing law enforcement resources for that  
185 specific state or local agency. The bond or deposit shall be used  
186 to augment existing state and local law enforcement budgets and  
187 not to supplant them.

188           **SECTION 4.** This act shall take effect and be in force from  
189 and after July 1, 2008.

